IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7850 OF 2007

Kewalchand Hirachand Oswal & anr. .. Petitioners

vs.

Union of India & 5 ors. .. Respondents

Mr.G.S.Godbole for the petitioners

Mr.Rajendra Raghuwanshi, Addl.Solicitor General with Mr.R.V.Govilkar and Ms.Rutuza Ambekar for the respondent no.1

Mr.Milind Sathe, Senior Advocate with Mr.Manish Pradhan i/b Junarkar and Associates for the respondent no.2

Ms.M.P.Thakkar, A.G.P. for the respondent nos.5 and 6

CORAM: J.N. PATEL &
A.A. SAYED, JJ.

DATE: 25TH OCTOBER, 2007.

P.C.

1. Heard the learned counsel for the parties.

2. The petition has been filed by the land owner seeking cancellation of the impugned declaration dated 27th April, 2005 bearing No.S.O.1606 published in the

Gazette of India dated 30th April, 2005 Part II under section 3 sub section (ii) in respect of the land of the petitioners bearing Gat No.141 of Village Pimpriwadi, Taluka Maval, District Pune. The claim of the petitioners is founded on two grounds. Firstly, that the petitioners were not served with a notice before the impugned declaration came to be issued under the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (Act 50 of 1962) which has deprived them of an opportunity of being heard in the matter particularly when the constitutional right of owning the land has been affected and secondly, that the respondents propose to construct a road on their land which is not permitted under the said Act, 50 of 1962 and further, this cannot be done unless their land is acquired in accordance with the provisions of the Land Acquisition Act, 1894.

3. In reply, our attention has been drawn to the fact that the petitioners were served with notice as contemplated under the Act, in response to which the petitioners have not only filed their objection through their advocate but were also given a hearing.

It is further contended that there is no proposal of constructing any road on the land of the petitioners. The respondents would be only using the land for the purpose of laying down underground pipelines for which the petitioners would be entitled for compensation as provided under the said Act 50 of 1962.

4. On seeking instruction from the petitioners who are present in court, the learned counsel for the petitioners submits that the first contention of the petitioners is that they were not served with any notice before the impugned application was made seeking acquisition or right of user of their land under the said Act 50 of 1962. In so far as it relates to petitioner no.1, he concedes that petitioner was served with notice and afforded an opportunity of being heard. In respect of petitioner no.2, the learned counsel for the petitioners is not able to controvert what is contended on behalf of the respondent.

5. Therefore, this court finds that the very basis on which the petitioners have challenged the impugned publication that the petitioners were not

heard in the matter does not survive as the petitioners are co-owners of the land in question and one of the co-owners admits the receipt of notice and being given an opportunity of hearing, the other co-owner is unable to substantiate his case of having been denied a hearing.

6. The other ground that the respondents propose to lay down the road on the land of the petitioners is probably gathered on misinformation as it is categorically stated on behalf of the respondents that there is no proposal to construct a road on the land of the petitioners.

7. We, therefore, do not find any merit in the petition and the same is dismissed.

(J.N. Patel, J.)

(A.A. Sayed, J.)